AN

# ENQUIRY

INTO

## *The political grade of the Free Coloured Population,*

UNDER

## THE CONSTITUTION OF THE UNITED STATES,

AND

## *THE CONSTITUTION OF PENNSYLVANIA:*

IN THREE PARTS.

BY A MEMBER OF THE CHAMBERSBURG BAR.

## PART I.

*Political condition of the Free Blacks before the adoption of the Constitution.*

Among the subjects of primary interest to the people of the United States, at present, may be ranked *the rapid increase of the African race within their bounds.* To this important theme the public mind has been attracted not only by motives of humanity and justice towards a degraded and injured caste, but by a lively principle of self-preservation also, that sees in *their removal from the land the only hope of permanent domestic security.* Some districts of the union, where the coloured population is dense, are known to be kept in a state of constant anxiety and vigilance, while others, by the insurrections of that class, have been made the theatres of the most tragical events. Whatever palliatives for these enormities a sensitive moralist may find in an abstract view of the rights of human nature, a sense of the public safety has led to the adoption of measures, in those parts of the country, but little friendly to the comfort of the coloured classes. Diligent inquiry, we are told, has, on most occasions, traced the source of these evils to the arts and instigation of the *free class*, removed from whose influence, the slaves are duly faithful and submissive, but, when exposed to it, easily made the instruments of crime.* The remedy was, therefore, deemed obvious; and a system of manumission, requiring the departure of the negro from the State as the condition of his freedom, aided by a penal code tending to the extermination of the black freeman, is accordingly the remedial plan now under experiment in perhaps most of the Southern States. It is maintained by those who are immediately interested in this mode of redress, that, in both features, it is in accordance with the Federal Constitution—that it is based upon the inalienable right of self defence, which, in every free government, is sure of protection, and impliedly incorporated in the fundamental law.

Whatever be the just view of this constitutional question, it is evident, from the nature of the subject matter, that all the States have a

* Letter of Gen. Harper to the Sec. of Col. Soc. 1817.

common, though unequal, concern in its decision: the right of one portion depending upon it, to rid themselves of an existing evil; and that of the other to anticipate the same evil by preventive legislation. The suffering States, by expelling the obnoxious caste from their bounds, are, virtually, introducing them into the territories of other States, to renew, there, at pleasure, the evils for which they were expelled; and if the former can take refuge behind the law of self defence to justify their measures, the latter, it would seem, might avail themselves of the same expedient in justification of theirs. The right of emancipating a slave upon condition of his leaving the State, is undisputed.—The question arises, altogether, out of the other branch of the remedy, *the expulsion of a coloured freeman.* As far as deliberate and effective *legislation* goes, the constitutional right of residence in the free black, has, as already mentioned, been negatived in many of the slave-holding States; and the question has been presented in the Legislature of Pennsylvania on a recent resolution for excluding him from the State.*

The Federal Constitution is of uniform obligation upon all the States of the Union; and should its provisions be clearly violated by the laws or practice of any one or more States, the example can have no force in sustaining a similar violation of its provisions by any other State.—If, therefore, the free coloured class are entitled to constitutional privileges in Virginia, or South Carolina, and without being chargeable with any offence inducing a forfeiture of those privileges, are banished from their territory, Pennsylvania or New York cannot refuse to receive them, if they demand admittance, merely on the authority of the Virginian or Carolinian laws. The constitution, in all such cases, is alone the governing rule. But if the example cited be one merely of a *doubtful infraction* of that instrument, and at the same time material to the protection of high public interests, the dictates of sound policy ought to furnish the rule of action. In the constitutions of North Carolina and Tennessee there is no clause prohibiting the free black the exercise of the elective franchise,† the noblest badge of citizenship; but it is by no means clear that he is recognized as a citizen by the Constitution of the United States. Now suppose that these States, in the exercise of sovereignty, and under the dread of future calamity from their remaining, should banish that class of their inhabitants from their soil, and that the outcasts should ask an asylum in Pennsylvania; how would that State feel bound to meet the case?—Would she yield to their demand—would she suffer the unity of her population to be broken by the intermixture of a black and servile caste—their lofty and enterprising spirit to be lost in an union with sloth and effeminacy, and her wide spread peace to be often jeopardied by the secret machinations of an internal and irreclaimable enemy? We will venture to answer for her, no:—She would adhere to the policy of her early days; and, without remitting her efforts in favor of a peeled and dishonoured people, she would be vigilant to preserve the body of her citizens from the pollution of so foreign and threatening an element.

There is no State in the confederacy more exposed to the incursions of the refuse black inhabitants of others than Pennsylvania; she has

* Session of 31-32, Mr. Vansant's resolution. † The constitutions of 1776 & 1796.

many of the coloured class already in her bosom, and a large part of her domain bordering upon the soil of slavery. Her laws too are mild and generous towards these people; and not a few of her worthiest citizens friendly to their reception.—Accordingly, they are daily flowing in upon her—occupying the time of her criminal courts, filling her jails and poor-houses, and sauntering through her towns and villages in misery and want: nor are the eyes of the Commonwealth ever awakened to their numbers until they have completed, as far as they are capable, a probationary title to citizenship under the Constitution of the State. That this state of things is a great public grievance is admitted by all who are friendly to the dignity and prosperity of the Commonwealth; but strange as it may seem, there are many of her citizens, eminent both for their discernment and legal information, who insist that it is beyond the Constitutional Power of the Legislature; and as it is a crescent evil, so is it destined to be a permanent one! Can it be that the Constitution binds so loathsome an excresence to the vitals of any State? If so, that charter has certainly failed to secure some of the chief benefits for which it was formed.

That the sovereign States composing this Union should, voluntarily, become parties to a frame of government, that would deprive them of the power to guard their own citizens from the dangers incident to a large influx of black aliens, with whom they never could become incorporated, is exceedingly unlikely; and, in the absence of an express provision in the instrument of government on the subject, the improbability of the fact should make us distrust any construction leading to such a conclusion.

Those who advocate the political equality of the white and black freeman in the United States, rest the doctrine upon the 1st clause of the 2nd section of the 4th art. of the Federal Constitution, which runs thus: "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." The term *citizen* is no where defined in the Constitution: it was employed by the convention as a word of known and establised meaning—descriptive of all who *are capable of citizenship in all of the States, with a due regard to the local qualifications required by each state.* That such is the true import of the term, may be gathered as well from the habits and views of the American community both before and since the adoption of the Constitution, as from the authority of learned jurists in the country who are conversant both with the language and spirit of that instrument.

An intermediate order, between the free citizen and the slave, has existed in most countries where involuntary servitude has prevailed.—We have striking examples of it in the free States of antiquity, as well under their republican as monarchical forms of government. In Greece they were comprehended under the general name of *metic*, and were subject to sundry disabilities unknown to the citizen.* In Rome they were known by the term *libertini*, and until the introduction of the lenient policy of Justinian were but seldom advanced to the freedom of the city. † This debased order was in these countries generally of the same race, language and complexion, of the superior classes—in the latter, especially, enjoying the privilege of intermarriage with them—but on

* Mitford 355. † Gibb. 168. Inst. Just. tit. 5.

account of their servile birth, alone, were retained in a modified servitude. According to the acute Montesquieu the safety of the Roman Republic depended in a great degree upon the restraints imposed upon this middle class; and he commends the political system by which their allegiance to the state was secured in connection with their crippled freedom. ‡ In regard to England, history sheds but a faint light upon her chapter of villeinage; but if we are permitted to judge by the rigid bondage of the villein, there cannot be much doubt, that, in his emancipated state, he was but little elevated in the body politic above the condition of the bondsman. By the Justinian code a child whose parents were of different rank was enrolled among those of ingenuous birth: but by the law of villeinage the issue succeeded to the grade of its enslaved parent. Besides, it is wholly improbable that a government so intrinsically based upon distinct orders of society as that of England, would, at a period of its history much less favourable to the liberty of the lower classes than the present, permit an enslaved portion of its subjects to emerge at once from their low estate to a station of entire freedom. *

Were we to compare the present condition of the United States with that of either of those countries, at the periods mentioned, we could not fail to discern in the relative color of their respective inhabitants, a much stronger reason for assigning a state of limited freedom, only, to the emancipated negro here, than the mere circumstance of birth could furnish for imposing a similar restraint upon the freed man there. We are, however, not the apologists of slavery in any form:—we would rejoice to see both "its name and nature withered from the world." But, it cannot be disguised, there is a law of expediency, upon this subject, applicable to the present posture of things in the United States. To state what that law is, belongs not to the immediate object of this inquiry, although its features may be collected from the facts and views here disclosed.

The first adventurers to this country were of the white race—chiefly subjects of the British crown—related by the same blood—speaking the same language—and ardently united in quest of free and just principles of government. The introduction of the African race among them is well known to have had an *extrinsic* origin—to have been the result of foreign cupidity, and entirely irrespective of the *social principle* that impelled and associated the colonists. The original draught of the Declaration of Independence shews this traffic to have been one of the enumerated acts of tyranny that led to the revolution; and various enactments of the colonies—rendered fruitless by the dissent of the crown—fully attest their uneasiness on account of the growing numbers of this class of their inhabitants. Being admitted unwillingly, they were also classified without favour: instead of being treated as members of the free community, or even clothed with the right of attaining to that rank, they were purchased as *slaves* and made subject to the absolute disposal of their owners. In a word, they were viewed as an

‡ Esprit des Loix. 253. * See Hallam's View.

In Russia the manumitted serf is likewise subject to some disabilities.—See Elliott's Travels, chap. 14—and the amended constitution of New York, in allotting the elective franchise to the free people of color under onerous conditions, places that class of her inhabitants in this very state of *quasi* freedom.—See 2 Kent's Com. 209.

addition to the *property* of the State, but never as an effective accession to its *numbers*. Their manumission afterwards was wholly an act of favour resting in the bosom of their masters; and, when thus favoured, their advancement to civil or political privileges was as wholly dependent upon the option of the white community. Indeed the annals of that early day do not shew that those privileges were in any of the colonies specifically conferred upon them. The antipathy that nature has established between the white and black races, and which, at the present day, allots them such different stations in society, was, perhaps, stronger then than now. The prosperous height of the slave trade had created, in the African race, a *domestic* foe to the liberty of the colonists, not less to be dreaded than the tyranny of the mother country, and, accordingly, served to cherish a distinction favourable to the ascendency of the white race.

Dangers connected with the increase of the coloured population were early discerned in many of the American colonies; and on *that account*, as well as from humane feeling, numerous laws were passed against the traffic in Slaves.* A law was passed in Pennsylvania, in 1712, expressly based upon the "*dangers of insurrection and murder from a negro population*," and the Petition to the throne presented by the house of Burgesses of Virginia in 1772, respecting the traffic, is replete with *this sense of danger;* we present the following extract from it: "The "importation of slaves into the colonies from the coast of Africa hath "long been considered a trade of great inhumanity, and, under its pre-"sent encouragement, *we have too much reason to fear will endanger* "*the very existence of your Majesty's American dominions.* * * * * * * "The traffic greatly retards the settlement of the colo-"nies with more *useful inhabitants*, and may, in time, have *the most de-*"*structive influence.* We presume to hope that the interest of a few "will be disregarded when placed in competition with the *security and* "*happiness of such numbers of your Majesty's dutiful and loyal sub-*"*jects*"‡ We are told also by Mr. Jefferson, that at an early period of the commonwealth, a bill was reported by the revisors of the Virginia code, fixing an era for the emancipation of the slaves, accompained by a plan for colonizing them as a separate and independent people.† And it is known to have been the uniform policy of the colonies to invite the European to their shores, and advance him to the highest privileges of the State; while the swarthy African was repelled by a penal law, or, when unwillingly admitted at a price, consigned to bondage.

That it was not a sentiment of humanity, *merely*, that prompted the colonial regulations against the slave trade, is evident from other considerations. It is a well attested fact, that some of the most enlightened men, in those sections of the country where the evils of that traffic were most prevalent, espoused and avowed the opinion that the white and black races are physically and morally distinct—the inferiority of the latter being supposed to unfit him alike for self-government and the refined enjoyments of an advanced state of society. To what extent this philosophical distinction may have obtained, we pretend not to say;

* See Walsh's Appeal for a reference to these laws, page 312—also 9th Wheat. Rep. 109 (note.) ‡ Tucker's Blackstone, Appendix to 1 vol. † Notes on Va.

but when we consider the influence of high authority in moulding public opinion in general, and the weight of peculiar interests that, in this instance, came to its aid, it would not seem unreasonable to infer that the doctrine won many advocates.

The conclusion to which the foregoing reflexions conduct us is not weakened by any thing in the frames of government adopted by the States after the Declaration of Independence. These instruments of government being formed upon the known sentiments of the community and the pre-existing relations of its members, cannot be construed so as to violate those sentiments, or effect a change in those relations, without a specific reference to them: and it is a well established rule, that a general term may have a restricted meaning when the nature of the case requires it, and such meaning best harmonizes with the antecedent views and present practice of the party concerned. In some of the States, the view we have taken is fully carried out by the express language of their Constitutions. In Delaware, Virginia, Kentucky, Missouri, South Carolina, and Georgia, the distinguishing privilege of the citizen—the right of voting—is confined to the *white* freeman exclusively—in the last mentioned State by a fraction only of the coloured population being included in the constituent mass. In the constitutions of the other Southern States the term *freeman*, or *free inhabitant*, is used to designate the electoral body. This term is of broad signification in itself, but when interpreted by the *common understanding* and *practice* of the people in those States, has the same limited application to the *white population alone*. The propriety of this construction is strongly supported by the legal disabilities of the coloured ranks in all of the States south of Pennsylvania. "In the "slave holding States," says a sensible writer, "the free blacks do in- "deed labour under civil incapacities; and the policy of denying them "the higher privileges of citizenship is imperative."* In addition to other deprivations, they are disqualified to hold offices of trust or profit, to sit as jurors, or to bear testimony in courts of law or equity affecting the interest of a white suitor. To apply the term *citizen* to one laboring under such material disabilities, would, certainly, be a perverson of its just import. In the majority of the free States, the numbers of the coloured class were too inconsiderable to merit special notice in their constitutions: their political rank was therefore left to be fixed by popular sentiment; and, we need hardly add, that in all of them they are deprived of some of the main privileges of the white citizen. We close this part of the argument, therefore, with the conclusion, that, at no period prior to the adoption of the Federal Constitution, was the free coloured population of this country admitted to an equal share of political power and privileges with the white race.

* Mr. Walsh—see his "Appeal," 395.

# PART II.

*Political condition of the Free Blacks under the Federal Constitution.*

"In democracies," says a historian already cited, speaking of the Grecian governments, "the supreme power was nominally vested in all "the people, yet those called the people who exclusively shared that "power, were scarcely a tenth part of the men of the State." The same remark is applicable in a degree to the government of the United States: it was nominally framed by all the people, yet, it is believed, a large class, residents of the soil, had no agency either direct or indirect in its formation; consequently the privileges which the constitution imparts, in the absence of any specific provision in behalf of a disfranchised class, can only be considered applicable to those who composed the sovereignty from which it emanated. This is equally true of the constitutions of the several States; and it will hardly be affirmed, that the *will of the coloured class* was in any manner consulted in the formation or adoption of these frames of government. We have endeavoured to shew that such an opinion is irreconcilable with the views and practice of the whole American community. The coloured class then having no political rights on the score of constituting a portion of the sovereign power at the formation of the general government, we come now to enquire, whether, in the charter of government then formed, there is any *specific provision* bestowing upon them the rights or privileges of the State?

By the clause of the constitution quoted in the first part of this essay, federal *privileges and immunities* are guarantied to the *citizens* of of the States respectively; but, as already said, we are not furnished with any description of the persons bearing that character. The reason of this omission is found in the right of each State to prescribe its own conditions of citizenship; and as the States differ in their regulations upon this subject, an exact definition, excluding their differences, and adopting only their points of agreement, was, perhaps, deemed by the convention both hazardous and unnecessary. That this is an exclusive right of the States, is not only attested by their uniform practice, but admitted by the language of the Federal Constitution. It is provided in the 1st art. of the Constitution that "the electors in each state shall have the qualifications requisite for *electors of the most numerous branch of the State legislature;*" and in the 2d art. "each State shall appoint, *in such manner as the legislature thereof may direct,*" the electors of president and vice president. These passages plainly shew, that the *electoral* right, which is a primary qualification of the citizen, is excepted from the meaning of the phrase *privileges and immunities* in the clause under consideration, which can only be viewed as descriptive of certain *local advantages incident to citizenship already acquired under the State laws:* otherwise, the laws of one State might dictate the terms of citizenship in every other. In this sense those *privileges and immunities* are conferred upon all who are citizens of any of the States, *having no inherent incapacity to become citizens in them all.* The character thus created, by the joint operation of the

State and Federal laws, is, properly, a FEDERAL CITIZEN—a name applicable to all who are *citizens of either of the States by birth or naturalization*, and excluding all whom *either of the States may have placed under disabilities, whatever political favors the same class may enjoy under the laws of other States.* By this construction, no violence is done to the language of the Constitution, while its spirit is harmonized with the uniform polity of the country, the present state of public sentiment, and the discrepant legislation of the several States,—by some of which—Delaware and Missouri, for instance—the free blacks of others are prohibited entering within their bounds.

Nor is this view of the Constitution objectionable on the score of novelty: it has the sanction of the most enlightened authority in the country. "The article in the Constitution of the United States," says the late Chancellor Kent, "declaring that citizens of each State are entitled to all the privileges and immunities of citizens in the several States, applies only to *natural born*, or *duly naturalized citizens;* and "if they remove from one State to another, they are entitled to the "privileges that persons of the same description are entitled to in the "State to which the removal is made, and to none other. If, therefore, "for instance, free persons of colour are not entitled to vote in Carolina, "free persons of colour emigrating there from a northern State, would "not be entitled to vote."* The *construction* here adopted by the learned commentator is equally explicit and just; but the *illustration* we cannot help thinking inaccurate, and opposed in part to an opinion elsewhere expressed by him in the same treatise. The word *privilege* in the Constitution was certainly not intended to embrace the *elective franchise*, but only certain accidents of that right growing out of local usages. The clause in which it is found is subordinate to the laws of the States on the subject of citizenship; but the things which it imports are unconditionally bestowed by the Constitution upon persons already supposed to be in the enjoyment of the electoral right. The Constitution imparts to *no description* of people in any one State, whether black or white, the *right of voting* in any other State; but it does SECURE *the privileges and immunities* of each State to the *citizens of all.* We agree moreover that these privileges and immunities are confined to "natural born or duly naturalized citizens," but, for reasons in part already stated, we must dissent from the opinion in the extract, that "*free persons of colour*" fall under that description.—Indeed, when the general sense of the quotation is moulded into a syllogism, it sustains our view, thus: The privileges and immunities of the Federal Constitution apply only to natural born or duly naturalized citizens—but free persons of colour are denied them in several of the States—therefore free persons of colour are not such citizens. It is with pleasure we acknowledge the high authority and general correctness of the works of this distinguished jurist; nor can we with any but a frail confidence venture to question the soundness of any of his constitutional views. Our dependence is on the common lot of the most enlightened and acute minds—a failure to preserve, in a general treatise, technical accuracy upon topics incidentally discussed.

This interpretation of the clause is farther strengthened by the au-

* 2 Kent's Com. p. 62.

thority of Justice Story in his valuable "commentaries on the Constitution of the United States." "The intention of this clause," says that writer, "was to confer on the *citizens* of *each* State, if one may so say, "a *general citizenship;* and to communicate all the privileges and im- "munities which the *citizens of the same State* would be entitled to un- "der the like circumstances."† According to this view of a very able expositor, the claimants of the privileges in question are invested with a *federal citizenship*, and classed with the *citizens* of the State to which *they have removed*—advantages that cannot be said to pertain to the *free coloured class*, who are ranked *below the citizens* in some of the States, and are denied even the right of *ingress* by others.—The qualifying *circumstances*, mentioned, do not change this meaning; they refer to local regulations that prevail in most of the States, and are applicable to the *most favoured* class of emigrants from others; but they are evidently not such as are incompatible with the *attainment* of *citizenship* by the emigrant in the State to which the removal is made, and, consequently, are not descriptive of the condition of the *free black*.

In collecting the various authorities upon the construction of this clause of the Constitution, we cannot omit that of the learned Mr. Rawle in his "View of the Constitution," a work of very superior merit. "The citizens of each State," he informs us, "constituted the citi- "zens of the United States when the Constitution was adopted. The "rights which appertained to them as citizens of those respective com- "monwealths accompained them in the formation of the great com- "pound Commonwealth which ensued;" he adds, "*every person* born "within the United States, its territories or districts, whether the pa- "rents are citizens or aliens, is a natural born citizen in the sense of "the Constitution and entitled to all the rights and privileges appertain- "ing to that capacity."* Such is unquestionably the true doctrine, limited, however, to the *white* population; and that the passage is subject to this limitation is obvious from the general remark by which it is introduced, viz: "Those only who compose the people and *partake of* "*the sovereignty* are *citizens;* they alone can elect and are *capable of* "*being elected to public offices*, and of course they alone can exercise "authority within the community." That the coloured freeman has ever been formally elevated to *citizenship* in any State of the Union, we are not prepared to admit; but we doubt whether any one will maintain that he has, in the sense of this writer, so shared in the sovereignity, either of the General or State governments, as to *entitle* him to that rank. To establish the negative, on this point, we do not deem it necessary to add any further evidence to the facts and reflections already presented.

It has been urged by some that the term *citizen*, in the Constitution, is applicable to *all the inhabitants* of the States, whatever may be their relation to the government; and that the *privileges* secured to them are *such only* as the State bestows upon the *class to which they belong*. If this be the true construction, it is equally opposed to the doctrine combatted: for it recognizes the inferior grade of the free blacks, and the authority of the States to place them under civil and political disabilities. But we cannot adopt this construction, for two reasons of

† 3 Story's Com. p. 675. * Rawle's View of Const. p. 86.

great weight,—First, the clause was manifestly intended to confer a *benefit* upon all within its range; but such cannot be its effect towards the coloured race, who, instead of bearing with them a *a title to privileges* in their migration from the Northern to the Southern States, carry a *liability to the most onerous and depressing disqualifications.* Secondly, the operation of the clause is co-extensive with the Republic—obligatory upon all the States; but in some of the States the free blacks of others are prohibited the right of *ingress*, both by their Constitution and laws.* This definition of the word *citizen*, moreover, is not in accordance with that of standard writers on government.—According to Sidney, "*freeholders who have their votes* are properly *cives, members of the Commonwealth*, in distinction from those who are only *incolæ* or *inhabitants*, slaves, and such as, being under their parents, are "not yet free."† *Entire freedom* and the *right of voting* are, therefore, indispensible properties of the *citizen*: and the epithet is abused when it is bestowed upon any disfranchised class—who are, technically speaking, *inhabitants* only. Vattel is to the same purpose. "The *citizens*," says he, "are the *members of the civil society*: bound to this society by "certain duties, and subject to its authority, they *equally participate in* "*its advantages.* The *perpetual inhabitants* are those who have received the right of a perpetual residence. These are a *kind of citizens of* "*an inferior order*, and are united and subject to the society *without* "*participating in all its advantages.*"‡

The great fallacy consists in supposing that the Federal Constitution has *of itself* created a *new citizen*, distinct from the citizen of the States; whereas it only imparts to the State citizen *new privileges*; in return for which, it, very properly, exacts his allegiance.‖

The corresponding section in the Articles of Confederation, it is admitted, betrays singular inattention to verbal accuracy,—a confusion of language that might at some future day have led to a serious disturbance of the government. The clause analagous to the one cited from the Constitution, runs thus: "the free inhabitants of each of these "States, paupers, vagabonds, and fugitives from justice excepted, shall "be entitled to all the privileges and immunities of free citizens in the "several States." Now, unless the phrase, *free inhabitant*, here, be taken as synonimous with *citizen*, the passage would have invested the Federal Power with a controlling authority over the laws of the States regulating the political grade of their several classes of inhabitants,—an authority which the States never could have surrendered consistently with the duty of self-guardian-ship. Taken subject to this construction, the clause is substantially the same with that of the Constitution, and consequently, can shed no light upon its meaning in regard to the description of persons under view.

It has been objected to this view of the subject, that the Constitution, in apportioning the representation among the States according to the "*whole number of free persons*," virtually bestowed a general citizenship to the extent of the enumeration.§ Now, although an omission of any class of the people, by the law fixing the constituent body, may be

* Delaware and Missouri. † Sidney on Govt. vol. 2. p. 312.
‡ Law of Nat. B. 1. ch. 19.—See also, Dr. Webster's definition. ‖ 2 Kent com. 37.
§ A writer over the signature of "Lysais," in Nat. Gaz. for 23d Nov. 1833.

fairly regarded as a political disfranchisement of that class—as in the Constitution of Georgia—yet, it does not follow, that all who are included in that body, whether by a general or specific description, belong to the rank of *citizens;* and to this extent the argument must go. It is founded upon the notion that all who constitute the basis of the representation, are *ipso facto* entitled to choose representatives! The position is undeniable, that the wise men who formed the Constitution, did not mean to interfere with the electoral body of the States, nor to create a privileged class different from the aggregate class of citizens. But, independent of this fact, the spirit of the objection here, would obviously ascribe the highest privilege of the citizen not only to *indented servants* and *resident aliens*, but to three fifths of the *slaves* also, who are equally included in the federal numbers—a conclusion at which no rational view of the government can ever arrive. It was wholly foreign to the object of this constitutional provision to designate those who were to have an active participation in the government; it is, *avowedly*, not confined to either the *citizens*, or *free inhabitants*, but, with one exception, embraces persons of *every rank and description*. The mere residents of a country, bound only by a temporary fealty, have personal rights and may have rights of property requiring and receiving the protection of the laws, and should, therefore, not be overlooked in adjusting the rule of representation. Such is the principle upon which the liberal rule of the Federal Constitution is based: its purpose was, to secure to the States an influence in the popular branch of the government, according to the *number* of *their inhabitants, respectively*, without any reference to the political rights or privileges of any class of their population.†

Equally fallacious is the pretence, that the liability of coloured freemen to taxation, coupled with their right of acquiring and holding property, constitutes them citizens. The unqualified alien is, to a certain extent, subject to the same burden, with the additional one of bearing arms, and enjoys the same privileges: but he is not thereby elevated to *citizenship*. These duties and benefits are incident to *residence* merely. Every just government extends the arm of protection over all its inhabitants, and they, in turn, owe it, according to their character, natural or local allegiance, the violation of either of which is punishable as treason:* but still this relationship of the parties is considered in every sound treatise upon national law, as distinct from that between the State and citizen.‡

The view here contended for derives support also from the tenor of the federal legislation. The naturalization law of 1802, that was passed by Congress in execution of the power confided to them by the Constitution, is expressly limited to aliens of the *white* race. The language of the first section is, "Any alien being a free *white* person may be admitted to become a citizen of the United States or any of them on the following conditions," &c. Thus, the *complexion* of the alien is made an essential prerequisite to his admission to the rights of a citizen in a mode that bestows the character as perfectly as birth; and as it has always been the policy of the United States to encourage

† Federalist, No. 54.

* 1 East. Plc. Cr. ch. 2. ‡ Madison's Report on Va. Resol. of 1798.

immigration, if the *native* coloured freeman here is advanced to those rights by birth, it would seem nothing short of a violation of the spirit of the Constitution to make the colour of the *foreigner* a condition of *his* receiving them. The law certainly affords presumptive evidence that, in the judgment of Congress, the colour of the African race is a constitutional barrier to their admission to the rank of citizens in the United States.

Concurrent testimony upon this head is furnished by the act of Congress of 1804, providing a temporary government for the Louisiana Territory. By this law the same distinction of the races is noticed, and the civil privileges of the territory are confined to the "free male *white*" residents. Now there is nothing in the language of the Constitution, respecting the public domain, that authorizes this discrimination in favour of the white race; but, it was doubtless the belief of the legislature that passed the law, that the plain spirit of the instrument approved the discrimination: and it is with a view to this fact only that the case is cited. Regarding this high legislative authority as unfolding the true spirit of the Constitution, how does the genius of this statute comport with the political equality of the two races under the immediate government of the Constitution? It is entirely incredible that a charter of government would, without words to that effect, sanction a *partial* distribution of the privileges of the State in one of its territorial districts the inhabitants of which were soon to be incorporated indiscriminately with the body of its own citizens, it others, *partaining to the disfranchised class* under the immediate government of the charter itself, were entitled to a full and equal share of those privileges. *

A looser phraseology has crept into other enactments of Congress, but, as will appear on examination, without any material bearing on the point at issue. The act of 1803 against the slave trade, provides for the punishment of any person who "shall import or bring any negro, mulatto, or other person of colour, not being a native, a *citizen* or registered seaman, into any port or place of the *United States*, which, by law has prohibited or shall prohibit the admission or importation of such negro," &c. ‡ The inference drawn, on the first blush, from this language, is, that the subjects of importation described, although persons of colour, may also be *citizens of the United States*. It is manifestly, however, not so. The act was passed under the power confered upon Congress by the 1st clause of the 2nd. section of the Constitution, and is *pointedly directed against the slave traffic*. It is farther observible, that its penalties are inflicted upon the *man-stealer*, and not upon the *voluntary emigrant*: and the crime which it denounces is not *migration*, but *forcible importation for objects of slavery*. The persons introduced, moreover, must be such as the states concerned have declared by law their *unwillingness to admit: of course* they cannot be *citizens* of any of the states, as no one state in the union has the power to refuse admission to the *citizens* of the others—the right of *ingress* being, unquestionably, among the privileges of the *citizen* secured by the federal Constitution † The whole object and tenor of the act, therefore, shews the phrase "*citizen of the United States*" to be redundant and expletive;

* See Rawle's View as before cited. ‡ 3 U. S. Laws 529. † 9 John R. p. 507.

and makes it unnecessary to add any thing upon the grammatical unfairness of ascribing citizenship to a class by language of *distinct negation.*

The joint resolution of Congress admitting Missouri into the Union, is perhaps deserving of more attention. When that exciting subject was under debate in the public councils, the question now under diuscussion formed part of it, and elicited much zeal and ingenuity on both sides.—On the application of the people of Missouri, a law was passed by Congress for their incorporation into the Union on the usual *republican principles.* When the Constitution of the inchoate state was presented for acceptance, it became a question whether those *republican principles* were complied with? It was suggested that the 4th clause of the 26th sect. which directed the legislature of the state to pass laws "to prevent *free negroes & mulattoes from coming to and settling in the state,* was repugnant to the clause of the Constitution of the United States which we are now considering, and in violation of the rights of the citizens of the several states. After being the subject of much harsh and critical comment, the objectionable clause was referred to a committee of three, of which the benevoleut and acute Mr. Lowndes was chairman. * The report of this committee was in favor of the republican spirit of the clause, but it avoids a decision of this question,—deeming it "one of nice and difficult inquiry, that, when a case occurs, should be remitted to judicial cognizance." This report being a production of very respectable authority, we take the liberty of extracting that part of it which relates to the subject of the present argument: "Of all the arti-"cles in our Constitution," says the committee "there is probably not one "more difficult to construe well, than that which gives to the citizens "of each state the privileges and immunities of the several states; there "is not one, an attention to whose spirit is more necessary to the conven-"ient and beneficial connexion of the states; nor one of which too large "a construction would more completely break down their defensive pow-"er, and lead more directly to their consolidation. This much in-"deed seems to be *settled by the established Constitutions of States in* "*every section of our Union: that a state has a right to discriminate* "*between the white and the black man, both in respect to political and* "*civil privileges, though both be citizens of another state: to give to* "*the one for instance the right of voting and of serving on juries which* "*it refuses to the other.* How far this discrimination may be carried, "is obviously a matter of nice and difficult enquiry."† According to this testimony the grade of the *free coloured man* in the United States is greatly inferior to that of the *citizen*: He may be subjected both to civil and political disabilities in all the states; while the *citizen* is not liable to either in any of them. It is true, the resolution accompanying the report was not adopted, but made to yield to the joint resolution of the two houses alluded to, which provided that the clause should be retained in the State Constitution, subject to the condition "that it should never be construed so as to deprive any citizen of any state of the privileges or immunities to which he is entitled as a citizen of the United States." But in this result, happy as it proved,

* The committee consisted of Mr. Lowndes, Mr. Sergeant and Mr. Smith. The report had the assent of the majority only.

† Niles Reg. vol. 19, p. 207.

there was *professedly no* legislative *adjudication* on the *character of the clause*. That question was suffered to remain as it was found. If the resolution adopted asserts the political claims of the coloured race, the Constitution of Missouri asserts the contrary. The restriction imposed upon the construction of the clause, merely reserves the rights of *citizens*: and who ever doubted that a new State, by the very act of acceding to the federal league, voluntarily submits to that limitation of its authority? The agitated subject was dismissed by a fraternal compromise of differing opinions, that restored the harmony of the country and referred the abstract question to the courts for settlement.

*These* are, therefore, not the acts of Congress to consult, to ascertain the sense of that body upon the subject of this enquiry. They hardly touch the problem: but in the laws *previously cited*, we have direct legislative action on the subject matter—an *explicit denial of political and civil privileges to persons of colour*. These laws import not merely a decision upon an abstract principle, but the application of a Constitutional rule to a real case, and may be likened to the judgment of a court of law upon a case litigated, with, perhaps, equal claims to authority.

*Nec quæro quid alibi, quæ alibi gesta sint.*

There is yet other authority directly to the point. "In most of the United States," says Chancellor Kent "there is a distinction in respect "to political privileges between free white persons and free coloured per- "sons of African blood: and in no part of the country do the latter, in "point of fact, participate equally with the whites, in the exercise of "civil and political rights. The African race are *essentially a degraded caste, of inferior rank and condition in society*."* This opinion, the reader will perceive, is not easily reconciled with the view of the Constitution taken by the same author in a former page. A caste "*essentially degraded*," cannot, at the same time, be *citizens*, nor, in any sense, entitled to *their* privileges and immunities under the constitution. The same doctrine is maintained in the Americana Cyclopædia (title, *Freedman.*) a book which if not of standard authority, is adorned with the ablest pens, and has gained much encomium for the correctness and solidity of its contents.

The question arose in a recent case in one of the inferior courts of Connecticut. It was an information filed by the Attorney General against one Prudence Crandall, "for boarding and lodging free coloured persons, for the purpose of instruction, not being inhabitants of the State," in alleged violation of a State law. It was urged for the accused that the law under which the prosecution was instituted, was repugnant to the constitution of the United States—the fourth art. of which secured to the free coloured inhabitants of all the States the right of ingress and residence in any of them. But Judge Dagget charged the jury decidedly against this position, chiefly upon the authority of the learned commentator just cited. "To my mind," (we quote from the charge,) "it would be a perversion of terms, and the well known "rule of construction, to say that slaves, free blacks or Indians, were "citizens within the meaning of that term as used in the constitution." The charge is a plain statement—as every charge to a jury ought to

* 2 Kent's Com. p. 258.

be—with but little of that ill judged garnish of learning and authority which judges are too prone to parade for the display of themselves and the confusion of the jury. The point is directly met and unequivocally decided. It may be doubted, however, that the condition of the *Indians* furnishes an apt illustration of that of the African race in the United States. Their nomadic habits are such, to be sure, as unfit them for the local life of citizens; but whether they do not both legally and physiologically belong to the *white* race, and whether their mode of life is any thing more than an adventitious obstacle, merely, to their acquiring the rank of citizens, are questions certainly deserving of some enquiry. The finding of the jury, in this case, was in accordance with the charge of the court, but the question may not yet be finally determined: it involves a principle of deep importance, both to the coloured population of the country, and the communities proper of the several states, and merits the decision of the highest judicial tribunal.

The true condition of the coloured ranks may be farther gathered from the *motive* that chiefly governed the states in enacting laws against the slave traffic. That motive, it has been shewn, was a sense of national freedom and security, and had reference to the *character* of the evil alone, and not to its *source*,—to the dangers menacing the state in an overgrown coloured population, and not to the country or place whence that population might come. This conservative power of the states over the unity and repose of their own citizens, was frequently frustrated, under the colonial government, by the sordid policy of the parent country, but, since the Declaration of Indepencence, it has, as we have seen, been effectively exercised by many of them, with the countenance and aid of the general government. In the formation of the Constitution, this power was conferred, concurrently, upon the federal government by the 9th sect of the 1st art. To have parted with it entirely would have been an abdication of the right of self protection on the part of the states, and might have involved the general government in a course of invidious legislation for the interior welfare of some of the states, that would have been productive of jealousy and discord. The power, therefore, was retained, as well as transferred, and may, at any time, be called forth to avert the evils over which it was originally exerted. The existence of this power in the states is recognized by the laws of the country, and the decisions of its courts: we believe its existence has never been denied; but, strange to tell, its exercise is supposed by some to be limited greatly within the bounds of the worst evil against which it can be directed!

The 1st clause of the 9th sec. of the 1st art. of the Constitution provides that," the *migration* or importation of such persons as *any of the* " *States now existing shall think proper to admit*, shall not be prohibited " by Congress prior to the year 1808; but a tax may be imposed on such " importation not exceeding ten dollars for each person." This clause, it is contended by the advocates of a restrictive construction, relates altogether to the *foreign slave trade*; and the prohibitory power of the states, implied in it, is confined to the *same source of danger*. This opinion is proper to those who assert the citizenship of the black freeman in the United States, and may be considered, indeed, a corollary from that doctrine—standing or falling with it. If the conservative

power of the states, in reference to the dangers of a dense coloured population, were *fully* adequate to their protection before the adoption of the Constitution, there is certainly nothing in the forgoing clause to restrict it to the African trade: unless the admission of a power over a specified object, is, virtually, a denial of its applicability to other objects not specified. The *increase of the tropical race* is the danger to be repelled; and what matters it, *whence* the influx immediately proceeds? It may be from another country, or only from another state; it may be by *forcible importation* from abroad, or by *voluntary migration* at home; still the mischief is the *same*, and the state may stand upon its reserved power against the invasion. Any other conclusion would leave the welfare of the states in greater insecurity than it was before the formation of the Union.

But there is considerable diversity of opinion among enlightened men as to the true scope and meaning of this clause of the Constitution:

Non nostrum tantas componere lites.

The late judge Addison, in speaking of it, says, "It is well known "that the prohibition in view respected only *slaves*. This was univer- "sally understood at the time of the publication of the Constitution, du- "ring its discussion, and ever since."* If this be the just meaning of the clause, it would seem to have been introduced, mainly, for the defence of the natural rights of the African, with but a secondary reference to the unity and peace of the American people:—it would shew the power of Congress to be plenary for the former object, but quite inadequate to the demands of the latter. But, however the power confided by the clause to Congress, may be limited to the foreign traffic, it can never be construed to abridge the pre-existing power of self protection in the States, which must, by necessity, be co-extensive with the sources of the evil.

The same view of this constitutional provision was taken by the "Federalist," with but few explanatory remarks upon its phraseology;† and the inquiring mind of Judge Story seems to have been also contented with this exposition, and the incoherent application of the word *migration*, to "voluntary arrivals" of *slaves*: for if the sense of the clause be confined to the *slave trade* there is no *other* class of persons, to whom the term can be applicable.‡ Such is, however, not the meaning ascribed to the passage by the court in the case of Gibbons *v.* Ogden, from which this discerning writer seems to have extracted this portion of his commentary.

It appears by the journal of the Federal Convention, that the word *migration* was retained in this clause of the Constitution in opposition to an amendment that was offered omitting it: Some specific meaning was therefore attached to it. In the language of Mr. Rawle, "the sec- "tion has a commercial, moral and *political* bearing," and should be construed accordingly. The word *importation* is well understood to refer solely to the *slave trade*; but *migration* cannot, philologically at least, have that application. In its loosest acceptation, it imports a *volunta-*

* See his "Defence of the Alien act." † "Federalist," No. 42.

‡ 3 Story's Com. 205-6.—The language of the author may be considered somewhat equivocal.

*ry change of place;* in its more exact sense, the change is confined to *different ports of the same country.* According to this latter sense, it can have no allusion to *foreigners;* and according to either sense, it is wholly irrelevant to both the foreign and domestic traffic in *slaves*—inasmuch, as *their* change of residence is always compulsory. The explanation of this word given by judge Addison, is the most plausible that we have seen in support of the narrow construction of the clause. He maintains that *migration* was used to correspond with the word *persons*, and is descriptive of the slave's passage over land after his *importation* or arrival.* However reasonable this exposition may appear, it is opposed by several names of equal ability and fame; to say nothing of the imperfect reference of the term, with all its aid, to a system of forcible abduction from abroad, and the *literal* diversion which it makes of the penalty of the law from the real culprit to the unoffending slave. *Who* then are the *migrants* contemplated by this clause? They are such "persons as any of the States shall *think proper to admit.*"—a *class* that might be *detrimental to the public weal*, and whose admission, on account of their *natural alienation from the white race*, many of the States *had already decided against.* Such was evidently the spirit of the legislation both in Virginia and Pennsylvania, referred to in a former page; and, as such, it was *equally* pertinent to the *coloured slave* and the *coloured freeman.*

This theory unfolds, still further, the reason for confining the naturalization laws to *white* aliens alone. Had they been extended to the tropical race, they would have come into serious conflict with the settled policy and laws of several of the States, and created the singular anomaly of two distinct classes of black freemen in the same State—the one occupying a degraded rank, and the other advanced to the dignity of citizenship.

It may be added also, in confirmation of this view, that the tax which Congress was authorized to impose, for the limited period mentioned in the clause, was restricted to the *imported* class alone; which argues that the *migrants* were not considered *subjects of traffic*, but, as *persons in voluntary transit*, liable, however, for *some cause*, to be arrested in their passage.

The strict interpretation of this clause meets with no countenance in the expositions of it furnished us by Mr. Jefferson and Mr. Madison, in the celebrated Resolutions and Report of the Virginia Legislature, in 1798. The judgment of two such statesmen on a constitutional question,—one of them having been a member of the Federal Convention—might be deemed oracular, were it not, that the greatest minds, in times of high political excitement, are liable to be swayed by partial motives. The word "*migration*" is treated, in these solemn acts of Virginia loyalty, as extending to "*white aliens;*" and, such, possibly, may be one of its legitimate applications; but there are, certainly, reasons to doubt it, and especially when the term is viewed in connection with the argument of these documents. ‡

In the first place; to refer the prohibitory power of the States admitted in the clause, to *white aliens*, would be adverse to their known

* Defence of Alien act. ‡ See 5th Resol. and Report.

and established policy, which sought to *increase*, but never to *reduce* the number of their white inhabitants. Indeed, so obvious was this fact, at the date of the report, that its author argues, that a power of prohibition over this class of persons *might be considered as not pertaining either to the general or state government*—a supposition that clashes with the sense of the resolution he was vindicating. Secondly: if the prohibitory power granted by the clause, was intended to embrace *white aliens*, it is difficult to account for its exercise being *deferred* for the period specified. This limitation is fully explained on the principle of a *compromise respecting slave property*, and may, although with less aptness, consist with the application of the passage to the *free portion of the coloured class* also: but we are altogether at a loss for its appropriate meaning in connection with *white aliens*. Thirdly: the fourth resolution of the series asserts the *power over white aliens* to be among "the *reserved powers of the States*, and *not delegated* to the U. States."—a position hardly compatible with the language of the clause itself, but still more irreconcileable with the authority given to Congress, "to establish an uniform rule of naturalization," as well as the spirit in which that authority has been carried into effect. The confounding of the word *migration* with *emigration* in this explanation, is of minor importance; but considering the *earnest retention* of it in this section by the framers of the Constitution, its grammatical use may not be unworthy of some attention.

We venture these strictures with the less diffidence, as public confidence in the soundness of the *general doctrine* of the Resolutions and Report has greatly abated of late. We allude to the complete overthrow of *nullification* by the powerful demonstrations of a distinguished Senator when that heresy was mainly rested by its champions upon the authority of these Virginia proceedings.* We are willing, however, to accede to this construction, so far as it *denies the propriety of restricting the meaning of the clause to the slave trade*; for to *that extent* it is now fortified by high, and, perhaps, more dispassionate authority.

We have now come to the celebrated case of Gibbons *v.* Ogden,† in which this provision of the Constitution was deliberately considered in the light of an illustration of the question at issue. The Chief Justice assents to the position of the counsel for the appellee, that this section of the Constitution is an exception, for a limited period, in favour of the States, of the power over commerce granted to the General Government; nor does he deny the *continuance* of the *prohibitory* power in the States over the persons mentioned in the section. But he maintains that the word *migration* has reference to navigation as a branch of commerce, and may be viewed as descriptive of "*voluntary arrivals*"—whether the transportation be by *land*, or water, or both,—and whether the intercourse be with a foreign nation, or only *between the States*. We extract a portion of his opinion; "Migration applies as appropriately to *voluntary* as importation does to involuntary arrivals; and so

† 9 Wheat. 1.

* See Webster's speeches on Foote's and Calhoun's resolutions. Mr. Madison has disclaimed all affinity between these Resolutions and Report and the South Carolina doctrine, but the advocates of that doctrine still maintain their intimate connection. Quis judicabit?

"far as an exception from a power proves its existence, this section "proves that the power to regulate commerce applies equally to the "regulation of vessels in transporting *men*, who pass from place to place "*voluntarily*, and to those who pass involuntarily." Again: "The "sense of the nation on this subject, (commerce,) is unequivocally mani- "fested by the provisions made in laws for transporting goods, *by land*, "between Baltimore and Providence, between N. York & Philadelphia, "and between Philadelphia and Baltimore." There is no intimation given by the Chief Justice that the word *migration* is in any sense applicable to *slaves*. If this be the true import of the clause, it is not easy to see how the *present existence of the prohibitory power of the States*, is reconcileable with the privileges of mutual trade and intercourse claimed by their respective citizens under other provisions of the Constitution. The view taken by this enlightened jurist, it is observed, brings the personal *intercourse* of the *citizens* within the operation of the clause: but if the commerce and intercourse of the citizens of the States are protected by the Constitution, or the laws of Congress under it, surely no State can defeat those privileges by prohibiting the *right of ingress* to citizens of the other States. It follows, therefore, either that the prohibitory power of the States has ceased, as being inconsistent with powers delegated to the United States, or that it must be restricted to *persons* and objects over which the delegated powers have not been extended. We know not that the absolute cessation of this important State power has ever been seriously asserted; and if it is to be confined in the range of its exercise as stated, we know no class of *persons* over whom it can be so beneficially employed for the State as the *free people of colour*.

The opinion of Justice Johnson in the same case contains a very liberal view of this clause of the Constitution. "Although," says he, "the leading object of this section undoubtedly was the importation of "slaves, yet the words are obviously calculated to comprise *persons of* "*all descriptions*, and to recognize in Congress a power to prohibit, "where the states permit, although they cannot permit *when the states prohibit*." Here is a plain acknowledgment of the *continuing prohibitory right of the states*; and the phrase *persons of all descriptions*, shews, in the understanding of this respectable member of the court, that with regard to that class of its objects specified in the clause, its range is not confined to *very narrow limits*. In the succeeding paragraph of this opinion "personal intercourse" is also noticed as comprised among the objects of the prohibitory power *delegated* in the section; by which we are left under the same necessity of giving up the state power altogether, or placing the "*migration" of the free coloured ranks* within the sphere of its exercise. Such are some of the prominent lights shed upon the provisions of the Constitution touching the subject of this enquiry; the result of which tends to strengthen the conclusion, that the "privileges and immunities" guarantied by that charter, are *confined exclusively to the white race*.

We are sensible that in applying the rule of interpretation here contended for, difficulties may arise out of the various shades of colour that pervade the human family: but however embarrassing these may prove, as they can involve only questions of *fact* they should have no force in determining the *law*. The same obstacle may have opposed

the execution of the law of 1804 for the government of the Louisiana Territory, and may be daily presented to the execution of the naturalization laws; but who would assert that these laws have been *therefore* abrogated, or that their plain meaning has changed? With regard to the *mass* of the coloured population in the U. States, the application of the rule will be easy; and where the natural mark of inferiority is so faintly impressed as to leave a decided predominance of the white blood, a liberal judge would hardly feel it a duty to repel the applicant. The learned commentator of New York remarks, in reference to the naturalization law, "I presume it excludes the inhabitants of Africa and "their descendants, and it may become a question to what extent per"sons of mixed blood, as mulattoes, are excluded and what shades and "degrees of mixture of colour disqualify an alien from application for "the benefits of the act of naturalization. Perhaps there might be diffi"culties also as to the copper coloured natives of America or the yel"low or tawny races of Asia; though I should doubt whether any of "them were "white persons" within the purview of the law." * If we are to form our opinion from this passage, the worthy chancellor would not be likely to act the part of a liberal law judge in enforcing our views of the Constitution.

In making these reflections we have had no predilections to gratify—no favourite project to further, separate from the general welfare of the American community. Our enquiries have been guided by an earnest regard to truth; and the conclusion to which they have led, has been adopted more with feelings of reluctance than cordiality. We compassionate the situation of the coloured man amongst us, but we are well convinced that it must ever continue to be, under this government, one of political and civil inferiority. Should the competent expounders of the laws chance to decide that he is entitled to the privileges of citizenship, *qui bono* the decision? The law of popular feeling—always transcendant—would promptly reverse it. The distinction of the two races is a *natural* one: *artificial* rules may disaffirm, but they can never obliterate it. We dwell not on supposed physical and moral differences, but the *colour* of the African, although not debasing in itself, has become, by circumstances now irremediable here, a badge of servitude, and must forever prevent any general amalgamation of the races. We consider all the plans that have been offered for this purpose, connected with immediate abolition, as *worse* than chimerical:—proceeding from perverted views of religion and philanthropy, they are essentially fraught with the heaviest evils to *both* classes of the population: such we believe too is the deliberate judgment of every one who has carefully and dispassionately weighed the subject:§ and we venture to assert that those who are loudest in the cause of abolition would be, if the public mind favoured the measure, the very last to take the "homeless Lybian" to their arms and make him a sharer of their blood and destiny.

* 2 Kent. Com. 6.

§ Gen. Harper's Letter to Sect. of Col. Soc. 1817. Walsh's Appeal p. 390, N. A. Review.

# PART III.

*Political rights of the Free Blacks in Pennsylvania.*

It follows from the foregoing views, that every state in the union possesses the sovereign power of prohibiting the ingress of the coloured inhabitants of the other states. In some districts of Penn'a, and in other of the free states, that class are admitted to political privileges; but the power of the state mentioned, is not the less perfect on that account, nor would it be impaired were they fully invested with local citizenship. For the power operating upon the coloured residents of *other states*, who are *not* comprized under the term *citizen* in the Federal Constitution, they cannot claim exemption from it on account of any thing in the government or laws of the states exercising it, to which they have never been subject.

But let us briefly enquire what is the true political rank of the *free blacks* in Pennsylvania; as it is chiefly with a view to the interests of that state that these sheets are written. This is a question that has already produced some speculation, and on which we believe there are different opinions entertained by inteligent men. On account of the smallness of their number during the proprietary government, there are but few references to the free coloured inhabitants of the province in its early legislation. From these, perhaps nothing can be gathered that is decisive of their claims to membership in the body politic. It was not until after the revolation, when by their increase they had acquired some importance in the state, that they came to be the subject of specific legislative notice; and, from that era, whether we form our opinion upon the general sentiment of the community, or the manifest spirit of its laws, we cannot avoid the belief, that they have had no just claim to the rank of citizens.

That the coloured man is clothed with the political rights and privileges of the white man, is an opinion, that, as far as we are informed, never *generally prevailed* in Pennsylvania. He has always been viewed as a *quasi* freeman only—deriving his imperfect freedom from the will of the white community, and enjoying it under their government rather by *toleration* than *right*. His occupation is usually menial—his social and civil grade below that of the meanest white man; and, by the stern law of common consent, he is absolutely ineligible to office—a dissability utterly at war with the rights of *citizenship* under a government where places of profit and trust are, politically speaking, accessible to the whole body of citizens.

But the general sense of the state has been more clearly signified in its laws. The electoral privilege—which we have before spoken of as the highest evidence of genuine political freedom—was conferred by the proprietary government on the "*freemen*" of the province; and the laws accompanyning the charter to Penn ascribed that character to persons who had been "servants or bondmen and are free by their ser-

vice,"* There being at that period, probably, none of the African race in the province who were not enslaved, *they* could not be considered within the description of these laws: and, indeed, had there been a *manumitted class*, the description evidently contemplates a freedom acquired *by the expiration of a contract for a* limited service.

It is provided in the 1st chap. of the Frame of Government adopted by the people of the State, in the year of the Declaration of Independence, "That all elections ought to *be free*, and that all *free men*, having a sufficient evident common interest with and attachment to the community, have a right to elect officers, or be elected into office;"§—and by the 47th sect. of the 2d chap. the elective franchise is conferred upon "the *freemen* in each city and county respectively." In seeking for the definition of the word "freemen," in this passage, it is obvious that reference must be had to the qualifying language employed in the previous one, and that no one can be considered as coming under that denomination who has not the *common interest and attachment* there required.—Could the character, then, with any propriety be accorded to the coloured ranks?—*Were they not*, and *are they not still*, by all that can blunt sensibility and alienate the heart, a *reckless dissaffected class?* He cannot feel a common interest with a community whose interests he is doomed to *subserve;* and where is the hope of his *attachment*, when the reward which it meets is nothing but social and civil degradation, and a denial of all participation in the government, its honors, its offices and its profits? The laws which followed, to give effect to this frame of government, have a manifest relation to the *alienated* condition of the coloured people. Soon after the adoption of that government, it was judged expedient to secure, by some measure, the fidelity of the citizens, who had just been released from subjection to the British crown. For this purpose, laws were passed in several successive years‡ REQUIRING the inhabitants to take an oath of allegiance to the government; but these laws were expressly restricted to the "male WHITE inhabitants." Now as we cannot regard this exemption of the coloured class as a testimony in favor of their superior loyalty to a government which they had no agency in establishing, it can only be received as evidence of their political disfranchisement. The same conclusion is to be drawn from the law of 1785, prescribing the qualifications of electors; by which the most essential property of the citizen is denied also, in terms, to the whole order of coloured inhabitants.‖ Although these laws were repealed by a subsequent act of 1789, abolishing tests, the repealing act only removed disabilities which they had created, and, of course, in no wise affected the condition of the coloured race, who were expressly absolved from their operation.

The act of 1780 for the abolition of slavery in the Commonwealth was passed also, in part, to ameliorate the condition of the black freeman. By the 7th section it is provided, that the offences of coloured freemen shall be subject to the same rules of trial that are applied to those of white inhabitants; and as this law preceded the disqualifying law last mentioned, it could not have intended to bestow privileges up-

* Conventions of Penn'a page 20–27. § page 56. ‡ Sess. 1777, 1778, 1779.
‖ See Dallas' edition of Laws for the reference to these acts, and Addison's essays

on this class which that law, by express language withholds, nor any, indeed, but the one here specified; while, in itself, it conclusively negatives the pre-existing claims of that class to equality with the white race.

It was after these repeated and solemn declarations of the soveriegn will of the Commmonwealth, respecting the political grade of its coloured inhabitants, that the present Constitution of Pennsylvania was formed. After the manner of the federal Constitution, it furnishes us no definition of the words *citizen* and *freeman* employed in it, but leaves them to be understood according to their *established acceptation*. That acceptation we have briefily endeavored to shew has *exclusive reference to white residents*.

If there is any thing that can add to the force of these views, it is the construction of the Constitution adopted by the legislature on the subject of the militia system. The 11th sec. of the 6th art. of the Constitution provides, that "the *freemen* of this Commonwealth "shall be armed and disciplined for its defence." The section is imperative, and *without discrimination*, saving only the necessarily implied one of *years;* yet, the Legislature, in executing its commmand, has passed laws restricting the duty of the soldier to "white male persons." These laws are therefore a violation of the Constitution, in not equally apportioning the burdens of the State, or else the term *freeman*, in the section cited, does not comprise the coloured population. The former position we believe has never been seriously maintained; while the latter is supported by the universal acquiescence of the citizens.

We have already alluded to a prevailing custom in some parts of the State of admitting black freemen to the elective franchise. To fault the generosity of this custom forms no part of our object; but we hesitate not to pronounce it destitute of all legal foundation. The qualifications that bestow that valuable property of the citizen, the black is not only unpossessed of, but without the capacity to attain. Enjoying the protection of the government and laws over both his person and property, the common tribute of the resident and his property may be exacted in return, without affecting his political grade. A law higher than human, connected, under a permissive Providence, with fortuitous causes infringing the natural rights of his race, has effectually, if not permanently, debarred him from the rank of a Constitutional citizen.

The provisions of a law that would afford an adequate safeguard to the State against the incursions of the debased caste from other States, we venture not to prescribe. It will, doubtles, demand much deliberation, as the object is one both of difficult and painful accomplishment. We are only afraid that it may require an infusion of rigour, nothing short of that by which the unhappy exiles are driven from their native soil.

We cannot conclude this dissertation without pointing the homeless outcasts to the asylum provided in the land of their ancestors. There, in a genial climate, the fullest freedom joined to the various blessings of civilization are held out to them. By the untiring efforts of the Colonization Society, supported by princely acts of private munificence, the Colony at Liberia is now firmly and prosperously established. The

colonists are daily growing in numbers; distinguished for their morality and good order; reaping the rich products of a fertile soil; enjoying a lucrative commerce, and animated by every prospect that can ensure stability and happiness to a community. If they reject a provision for their independence and comfort so alluring, we would shudder to predict their destiny. We are aware that the means of that Society are yet limited; but how is this just and high minded republic to repair the injuries it has inflicted upon an unoffending and unprotected people; how is it to advance the "general welfare" of its own citizens, and shield them in the distant vista of ages from events that the heart fails to dwell upon? How, better, than by now extending the national arm to sustain the weakness of this benevolent and patriotic association?* The theme is not one to be merged in Constitutional scruples, or barren asseverations of want of power: it entwines itself around the national weal and connects it, indissolubly, with the Liberian settlement. If the infant arm of benevolence now raised in this lofty enterprize, be suffered to fall palsied for the want of national aid, the renown of this nation may not fall simultaneously, but we should remember that it can endure only while the ascendency between the races remains where it is.

* We know that the phrase "*general welfare*," is, in its approved sense, connected with the *taxing power*, but as the aid required by the ColonizationSociety is *pecuniary*, it is to the taxing power that its necessities make the appeal. But every objection would be obviated by an amendment of the Constitution, or a general co-operation of the States.

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